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Attorneys for Defendants
BAYER ANIMAL HEALTH GmbH and BAYER AG

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

TEVRA BRANDS, LLC,

Plaintiff,

v.

BAYER HEALTHCARE LLC, BAYER
ANIMAL HEALTH GmbH, and BAYER AG,

Defendants.

Case No. 5:19-cv-04312-BLF

**DECLARATION OF TIM SCHAPKER
IN SUPPORT OF TEVRA BRANDS,
LLC'S ADMINISTRATIVE MOTION
FOR LEAVE TO FILE UNDER SEAL
PORTIONS OF ITS OPPOSITION TO
DEFENDANTS BAYER AG AND
BAYER ANIMAL HEALTH GMBH'S
MOTION TO DISMISS FIRST
AMENDED COMPLAINT AND
EXHIBITS THERETO**

Judge: Hon. Beth Labson Freeman

I, Tim Schapker, declare as follows:

1. I am counsel for Bayer HealthCare LLC (“Bayer”). I make this declaration based upon matters within my own personal knowledge and if called as a witness, I could and would competently testify to the matters set forth herein. I make this declaration in support of Tevra Brands, LLC’s Administrative Motion for Leave to File Under Seal Portions of Its Opposition to Defendants Bayer AG and Bayer Animal Health GmbH’s Motion to Dismiss First Amended Complaint and Exhibits Thereto.

2. I have reviewed the following documents and confirmed that the exhibits and portions of Tevra’s Opposition identified below merit sealing:

Document	Portion(s) to Seal	Reasons(s) for Sealing
Exhibits H-X to the Declaration of Daniel D. Owen in Support of Plaintiff’s Opposition	Entire documents	Exhibits H-X to the Declaration of Daniel D. Owen in Support of Tevra’s Opposition contain information that has been designated as either “Highly Confidential - Attorneys’ Eyes Only” or “Confidential” by Bayer. <i>See</i> Schapker Decl. ¶ 3. These documents contain highly confidential, sensitive business information of Bayer and Bayer’s customers. <i>See</i> Schapker Decl. ¶ 4.
Plaintiff’s Opposition	Highlighted portions at page 6, lines 17-18; page 7, lines 2-3, 5-7, 9-16; page 8, lines 6-10, 12-27; page 9, lines 2-10, 12-14, 16-18, 24-27; page 10, lines 1, 5-6; and page 13, lines 17-19.	The highlighted portions at page 6, lines 17-18; page 7, lines 2-3, 5-7, 9-16; page 8, lines 6-10, 12-27; page 9, lines 2-10, 12-14, 16-18, 24-27; page 10, lines 1, 5-6; and page 13, lines 17-19 contain information that has been designated as either “Highly Confidential - Attorneys’ Eyes Only” or “Confidential” by Bayer. <i>See</i> Schapker Decl. ¶ 3. These portions contain highly confidential, sensitive business information of Bayer and Bayer’s customers. <i>See</i> Schapker Decl. ¶ 4.


3. Exhibits H-X to the Declaration of Daniel D. Owen in Support of Tevra Brands, LLC’s Opposition to Defendants Bayer AG and Bayer Animal Health GmbH’s Motion to Dismiss

1 First Amended Complaint and the highlighted portions of Tevra's Opposition contain information
2 that Bayer has designated as either "Highly Confidential – Attorneys' Eyes Only" or "Confidential"
3 under the protective order entered in this case.

4 4. These exhibits and the highlighted portions of Tevra's Opposition that reference these
5 exhibits contain highly confidential, sensitive business information of Bayer and Bayer's customers
6 relating to Bayer's agreements, pricing arrangements with retailers, sales and product strategy, and
7 competitive analysis. This highly confidential information is not publicly known, and its
8 confidentiality is strictly maintained. If this information were made public, Bayer's competitors and
9 counterparts would have insight into how Bayer structures its business arrangements, allowing them
10 to modify their own business strategy. Bayer's competitive standing and relationships with its
11 customers could be significantly harmed. In particular:

- 12 • Exhibit H contains a highly confidential communication between Bayer and one of its
13 customers regarding product rebates;
 - 14 • Exhibit I contains highly confidential discussion between Bayer employees regarding
15 one of Bayer's customers and Bayer's discount policies;
 - 16 • Exhibit J contains a highly confidential declaration that was filed under seal in a
17 separate litigation. *See Bayer Intellectual Prop. GmbH et al. v. CAP IM Supply, Inc.*,
18 No. 1:17-cv-00591-RGA, ECF No. 8;
 - 19 • Exhibits K and L are internal company presentations containing highly sensitive
20 information regarding Bayer retail strategy and competitive analysis;
 - 21 • Exhibits M, U, and V contain highly confidential discussion between Bayer employees
22 regarding research studies carried out by Bayer;
 - 23 • Exhibits N and X contain highly confidential discussion of Bayer sales performance;
 - 24 • Exhibits O, P, S, T, and W contain highly confidential discussion between Bayer
25 employees regarding product, sales, and marketing strategy; and
 - 26 • Exhibits Q and R contain highly confidential discussion between Bayer employees
27 regarding competition to Bayer products.
- 28

6. Tevra's request is narrowly tailored to sealing Bayer confidential documents and those portions of Tevra's Opposition that merit sealing.


Tim Schapker